

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

OCT 17 2003

JAMES LUTCHER NEGLEY

3905 Laguna Vista Cove

Austin, TX 78746

Plaintiff,

v.

**FEDERAL BUREAU OF
INVESTIGATION**

935 Pennsylvania Avenue, N.W.

Washington, D.C. 20535

Defendant.

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Case No.

CASE NUMBER 1:03CV02126

JUDGE: Gladys Kessler

DECK TYPE: FOIA/Privacy Act

DATE STAMP: 10/17/2003

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, James Lutcher Negley ("Negley"), for his Complaint for Declaratory and Injunctive Relief against Defendant, Federal Bureau of Investigation ("FBI"), alleges as follows:

Nature of Action

1. This is an action by Negley under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), to order the complete production of agency records concerning Negley in the San Francisco Field Office of the FBI, which Defendant has improperly withheld from Negley.

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).
3. Venue is proper pursuant to 28 U.S.C. § 1391, in that a substantial part of the events giving rise to the claims at issue occurred in this District and Defendant resides in this District.

Parties

4. Negley is a resident of Austin, Texas, and the requester of the withheld documents.

5. Defendant is an agency of the United States within the definition of FOIA, with headquarters in Washington, D.C., and has possession of the documents that Negley seeks.

Factual Allegations

6. By letter dated January 16, 2002, Negley requested access to "any records about me maintained at and by the FBI in [the San Francisco] field office" (the "FOIPA Request"). A copy of this letter is attached as Exhibit A.

7. Chief Division Counsel of the FBI in San Francisco responded on January 30, 2002 by informing Negley that a search of the San Francisco Division records revealed no records responsive to the FOIPA Request. A copy of this letter is attached to Exhibit B.

8. Negley appealed the denial of the FOIPA Request to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, on February 14, 2002. The appeal noted that documents produced under a previous FOIPA request (to the Sacramento Field Office of the FBI) made specific reference to File Number 149A-SF-106204,¹ presumably the notation of a San Francisco file containing information concerning Negley. A copy of this letter is attached as Exhibit C.

9. On April 23, 2002, Negley sent a facsimile to the San Francisco Field Office of the FBI, stating that other relevant File Numbers were 149A-SF-106204-S and 149A-SF-10624-S-1575 (the "Amended FOIPA Request"). A copy of this facsimile, without attachments, is attached as Exhibit D.

¹ The letter dated February 14, 2002 mistakenly referenced File Number 49A-SF-106204, when in fact the file at issue was File Number 149A-SF-106204. See Exhibit C. This mistake was clarified in subsequent correspondence between the parties.

10. By letter dated April 30, 2002, Negley was informed that there were no records responsive to his Amended FOIPA Request (other than those produced under the previous FOIPA Request by the Sacramento Field Office of the FBI).² A copy of this letter is attached as Exhibit E.

11. Negley appealed the denial of the Amended FOIPA Request to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, on May 13, 2002. A copy of this letter is attached as Exhibit F.

12. Richard L. Huff, Co-Director of the Office of Information and Privacy of the U.S. Department of Justice, responded to Negley's appeal on behalf of Defendant on September 30, 2002. In this letter, Mr. Huff finally acknowledged that in fact Negley was discussed in files located at the San Francisco Field Office of the FBI. Accordingly, Defendant finally produced thirty-seven documents responsive to the Amended FOIPA Request from File Number 149A-SF-106204. A copy of the letter is attached as Exhibit G.

13. At the same time, however, Negley was denied access to the remaining pages of File Number 149A-SF-106204 on the grounds that these documents were exempt from disclosure under 5 U.S.C. §§ 552(b)(2), (7)(C) & (7)(D). See Exhibit G.

14. With regards to the Amended FOIPA Request concerning File Number 149A-SF-10624-S-1575, Mr. Huff summarily responded: "Please be advised that the records that consist of the San Francisco Field Office's 149A-SF-10624-S-1575 are not the same records that you faxed to our Office and are not responsive to your request for records concerning you." See Exhibit G.

² In this letter, Defendant acknowledged the receipt of Negley's April 23, 2002 facsimile, i.e., the Amended FOIPA Request.

15. Defendant failed to provide any response whatsoever to the Amended FOIPA Request concerning File Number 149A-SF-10624-S. See Exhibit G.

16. On October 7, 2002, undersigned counsel wrote to Mr. Huff seeking clarification of the inconsistencies in Mr. Huff's September 30, 2002 letter to Negley.³ Specifically, undersigned counsel took issue with Defendant's response concerning File Number 149A-SF-10624-S-1575, noting again that several previously produced documents concerning Negley made specific reference to this file number, and therefore this file likely concerned Negley as well. A copy of the letter is attached as Exhibit H.

17. Mr. Huff, again acting on behalf of Defendant, responded directly to undersigned counsel on November 26, 2002. In this letter, Defendant admitted again that File Number 149A-SF-106204 was responsive to Negley's Amended FOIPA Request, but stated that ten pages were withheld under 5 U.S.C. §§ 552(b)(7)(C) & (D).⁴ A copy of the letter is attached as Exhibit I.

18. Mr. Huff also addressed the issue concerning File Number 149A-SF-106204-S-1575. Oddly enough, at first he stated that the file does not pertain to Negley. However, he proceeded to state that this information was withheld pursuant to exemptions listed under 5 U.S.C. §§ 552(b)(2), (7)(C) & (7)(D), which implies that the file does in fact concern Negley and is responsive to the Amended FOIPA Request. See Exhibit I.

Claim Under FOIA

19. Negley has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for Defendant's denial of such access.

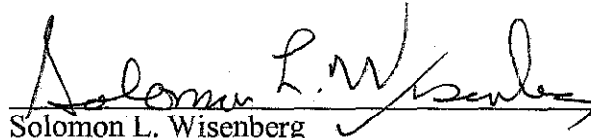
³ Four days prior to this letter, Negley sent a short facsimile to Mr. Huff asking once again for the missing documents. Presumably, this facsimile was ignored as improper under the procedures for filing a FOIA appeal and subsequent Complaint.

⁴ Presumably, then, Defendant has abandoned its previous assertion that ten pages of File Number 149A-SF-106204 can be withheld pursuant to 5 U.S.C. §§ 552(b)(2).

WHEREFORE, Plaintiff Negley requests that this Court enter a judgment in his favor as follows:

- A. Order Defendant to make the information⁵ available as requested based on reasonably estimated costs and non-commercial user fees;
- B. Order Defendant to provide access to all other documents concerning or mentioning Negley maintained at or by the FBI in the San Francisco Field Office, as originally requested in the FOIPA Request;
- C. Award Plaintiff costs and reasonable attorneys' fees in this action, as provided under 5 U.S.C. § 552(a)(4)(E); and
- D. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Solomon L. Wisenberg
Prashant K. Khetan
ROSS, DIXON & BELL, L.L.P.
2001 K Street, N.W.
Washington, D.C. 20006-1040
(202) 662-2000

Attorneys for Plaintiff James Lutchter Negley

Date: October 17, 2003

⁵ These documents consist of File Number 149A-SF-10624 (fax notations "P.36/48", "P.40/48 – P.48/48" and, if it exists, "P.01/48"), the entire File Number 149A-SF-10624-S-1575 and, if it exists, File Number 149A-SF-10624-S.